



In the Matter of:

THOMAS MASTRIANNA,

ARB Case No. 99-012

COMPLAINANT,

ALJ Case No. 98-ERA-33

v.

DATE: September 13, 2000

NORTHEAST UTILITIES CORPORATION,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Robert W. Heagney, Esq., *Gilman & Marks, Hartford, Connecticut*

For the Respondent:

Charles C. Thebaud, Jr., Esq.; Paul J. Zaffuts, Esq.; Goran P. Stojkovich, Esq., *Morgan, Lewis, & Bockius, LLP, Washington, D.C.*

ORDER OF DISMISSAL

On October 26, 1998, an Administrative Law Judge (ALJ) issued a Recommended Decision and Order Dismissing Claim With Prejudice (R.D.&O.) in this case which arises under the employee protection provisions of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. §5851 (1994). The ALJ recommended dismissing Complainant Thomas Mastrianna's claim because he failed to file it within 180 days of the allegedly discriminatory act as required by 42 U.S.C. §5851(b)(1).

On November 5, 1998, the Administrative Review Board (Board) received Mastrianna's petition for review of the ALJ's R.D.&O. The Board issued a Notice of Appeal and Order Establishing Briefing Schedule giving Mastrianna until December 17, 1999, to file his initial brief. On December 16, 1998, the Board received Mastrianna's motion for a 60-day continuance,

which was granted. Under the amended briefing schedule, Mastrianna's initial brief was due on or before February 17, 1999.

On March 4, 1999, the Board received Respondent Northeast Utilities Corporation's (Northeast) Motion to Dismiss Mastrianna's claim because Mastrianna had failed to file his initial brief. On March 8, 1999, the Board received another motion for continuance from Mastrianna.

Northeast filed a motion in opposition on March 10, 1999. The Board scheduled a teleconference for March 19, 1999. Although Mastrianna's attorney received notice of this teleconference, he did not participate.

On March 23, 1999, the Board denied Mastrianna's March 8, 1999 Motion for Continuance. The Board declined to rule on Northeast's motion to dismiss and gave Northeast until April 20, 1999, to file a statement in support of the ALJ's R.D.&O., if it chose to do so. The Board gave Mastrianna until May 7, 1999, to file a rebuttal brief exclusively responsive to any issue raised by Northeast in its statement in support of the ALJ's R.D.&O. The Board also permitted Mastrianna to file a brief in opposition to Northeast's motion to dismiss by May 7, 1999.

Northeast declined to file a brief before the Board and, on April 2, 1999, again urged the Board to dismiss Mastrianna's claim. Northeast also asked the Board to reconsider its Order granting Mastrianna until May 7, 1999, to file an opposition to the Motion to Dismiss. Mastrianna filed neither a rebuttal brief nor an opposition to Northeast's Motion to Dismiss. Instead, on April 22, 1999, Mastrianna filed a response to Northeast's reconsideration request noting "the Statement of Northeast Nuclear Energy Company dated April 2, 1999 should be disregarded by the ARB, and the Response date of May 7, 1999 for council [sic] for Mr. Mastrianna should be maintained." Mastrianna filed nothing further.

Courts possess the "inherent power" to dismiss a case for lack of prosecution. *Link v. Wabash R.R.*, 370 U.S. 626, 630 (1962). This power is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Id.* at 630-31. *Accord Tri-Gem's Builders, Inc.*, ARB Case No. 99-117, Order of Dismissal (Feb. 25, 2000). Like courts, this Board necessarily must manage its docket in an effort to "achieve the orderly and expeditious disposition of cases." Thus, given Mastrianna's unexplained failure to submit a brief, notwithstanding the Board's every effort to allow him sufficient time to do so, we find that he has failed to prosecute his

petition for review of the ALJ's R.D.&O. Accordingly, we **DISMISS** Mastrianna's petition for review.^{1/}

SO ORDERED.

PAUL GREENBERG

Chair

E. COOPER BROWN

Member

CYNTHIA L. ATTWOOD

Member

^{1/} Because we dismiss Mastrianna's petition for review, the ALJ's R.D.&O. becomes the final order of the Secretary pursuant to 29 C.F.R. §24.7(d). In light of this, Northeast's Motion to Dismiss is moot.